

**ASSEMBLY BILL**

**No. 663**

**Introduced by Assembly Member Vincent**

February 23, 1999

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An act to amend Section 667.5 of, and to repeal Section 1170.95 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

AB 663, as introduced, Vincent. Sentencing.

Existing law requires that an increased term of imprisonment of 3 years be imposed upon conviction of a violent felony, as defined, for each separate prior prison term served by the defendant where the prior offense was also one of the specified violent felonies. A violent felony is defined to include specified offenses including robbery that is perpetrated in specified ways that constitute first degree robbery where it is charged and proved that the defendant personally used a deadly or dangerous weapon, as defined, in the commission of that robbery.

This bill would define violent felony under the above enhancement provision, to include any robbery where it is charged and proved that the defendant personally used a deadly or dangerous weapon, as defined, in the commission of that robbery. The bill would also make conforming changes. By increasing the punishment for a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated

by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 667.5 of the Penal Code is  
2 amended to read:

3 667.5. Enhancement of prison terms for new offenses  
4 because of prior prison terms shall be imposed as follows:

5 (a) Where one of the new offenses is one of the violent  
6 felonies specified in subdivision (c), in addition and  
7 consecutive to any other prison terms therefor, the court  
8 shall impose a three-year term for each prior separate  
9 prison term served by the defendant where the prior  
10 offense was one of the violent felonies specified in  
11 subdivision (c). However, no additional term shall be  
12 imposed under this subdivision for any prison term  
13 served prior to a period of 10 years in which the defendant  
14 remained free of both prison custody and the commission  
15 of an offense which results in a felony conviction.

16 (b) Except where subdivision (a) applies, where the  
17 new offense is any felony for which a prison sentence is  
18 imposed, in addition and consecutive to any other prison  
19 terms therefor, the court shall impose a one-year term for  
20 each prior separate prison term served for any felony;  
21 provided that no additional term shall be imposed under  
22 this subdivision for any prison term served prior to a  
23 period of five years in which the defendant remained free  
24 of both prison custody and the commission of an offense  
25 which results in a felony conviction.

26 (c) For the purpose of this section, “violent felony”  
27 means any of the following:

28 (1) Murder or voluntary manslaughter.

29 (2) Mayhem.



(3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.

(4) Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(5) Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(6) Lewd acts on a child under the age of 14 years as defined in Section 288.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7 or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in Section 12022.5, 12022.53, or 12022.55.

~~(9) Any robbery perpetrated in an inhabited dwelling house, vessel, as defined in Section 21 of the Harbors and Navigation Code, which is inhabited and designed for habitation, an inhabited floating home as defined in subdivision (d) of Section 18075.55 of the Health and Safety Code, an inhabited trailer coach, as defined in the Vehicle Code, or in the inhabited portion of any other building, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022, in the commission of that robbery.~~

(10) Arson, in violation of subdivision (a) of Section 451.

(11) The offense defined in subdivision (a) of Section 289 where the act is accomplished against the victim's will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.

(12) Attempted murder.

1 (13) A violation of Section 12308.

2 (14) Kidnapping, in violation of subdivision (b) of  
3 Section 207.

4 (15) Kidnapping, as punished in subdivision (b) of  
5 Section 208.

6 (16) Continuous sexual abuse of a child, in violation of  
7 Section 288.5.

8 (17) Carjacking, as defined in subdivision (a) of  
9 Section 215, if it is charged and proved that the defendant  
10 personally used a dangerous or deadly weapon as  
11 provided in subdivision (b) of Section 12022 in the  
12 commission of the carjacking.

13 (18) Any robbery of the first degree punishable  
14 pursuant to subparagraph (A) of paragraph (1) of  
15 subdivision (a) of Section 213.

16 (19) A violation of Section 264.1.

17 The Legislature finds and declares that these specified  
18 crimes merit special consideration when imposing a  
19 sentence to display society's condemnation for these  
20 extraordinary crimes of violence against the person.

21 (d) For the purposes of this section, the defendant  
22 shall be deemed to remain in prison custody for an offense  
23 until the official discharge from custody or until release  
24 on parole, whichever first occurs, including any time  
25 during which the defendant remains subject to  
26 reimprisonment for escape from custody or is  
27 reimprisoned on revocation of parole. The additional  
28 penalties provided for prior prison terms shall not be  
29 imposed unless they are charged and admitted or found  
30 true in the action for the new offense.

31 (e) The additional penalties provided for prior prison  
32 terms shall not be imposed for any felony for which the  
33 defendant did not serve a prior separate term in state  
34 prison.

35 (f) A prior conviction of a felony shall include a  
36 conviction in another jurisdiction for an offense which, if  
37 committed in California, is punishable by imprisonment  
38 in the state prison if the defendant served one year or  
39 more in prison for the offense in the other jurisdiction. A  
40 prior conviction of a particular felony shall include a

1 conviction in another jurisdiction for an offense which  
2 includes all of the elements of the particular felony as  
3 defined under California law if the defendant served one  
4 year or more in prison for the offense in the other  
5 jurisdiction.

6 (g) A prior separate prison term for the purposes of  
7 this section shall mean a continuous completed period of  
8 prison incarceration imposed for the particular offense  
9 alone or in combination with concurrent or consecutive  
10 sentences for other crimes, including any  
11 reimprisonment on revocation of parole which is not  
12 accompanied by a new commitment to prison, and  
13 including any reimprisonment after an escape from  
14 incarceration.

15 (h) Serving a prison term includes any confinement  
16 time in any state prison or federal penal institution as  
17 punishment for commission of an offense, including  
18 confinement in a hospital or other institution or facility  
19 credited as service of prison time in the jurisdiction of the  
20 confinement.

21 (i) For the purposes of this section, a commitment to  
22 the State Department of Mental Health as a mentally  
23 disordered sex offender following a conviction of a felony,  
24 which commitment exceeds one year in duration, shall be  
25 deemed a prior prison term.

26 (j) For the purposes of this section, when a person  
27 subject to the custody, control, and discipline of the  
28 Director of Corrections is incarcerated at a facility  
29 operated by the Department of the Youth Authority, that  
30 incarceration shall be deemed to be a term served in state  
31 prison.

32 (k) Notwithstanding subdivisions (d) and (g) or any  
33 other provision of law, where one of the new offenses is  
34 committed while the defendant is temporarily removed  
35 from prison pursuant to Section 2690 or while the  
36 defendant is transferred to a community facility pursuant  
37 to Section 3416, 6253, or 6263, or while the defendant is on  
38 furlough pursuant to Section 6254, the defendant shall be  
39 subject to the full enhancements provided for in this  
40 section.

1 This subdivision shall not apply when a full, separate,  
2 and consecutive term is imposed pursuant to any other  
3 provision of law.

4 SEC. 2. Section 1170.95 of the Penal Code is repealed.

5 ~~1170.95. When a subordinate consecutive term of~~  
6 ~~imprisonment is imposed pursuant to Sections 669 and~~  
7 ~~1170 that involves one or more convictions for robbery~~  
8 ~~where it is charged and found that in each of those~~  
9 ~~robberies that the defendant personally used a deadly or~~  
10 ~~dangerous weapon in the commission of that robbery, as~~  
11 ~~provided in subdivision (b) of Section 12022, and each of~~  
12 ~~those robberies is not a violent felony, as defined in~~  
13 ~~subdivision (c) of Section 667.5, the aggregate term shall~~  
14 ~~be calculated as provided in subdivision (a) of Section~~  
15 ~~1170.1, except that the subordinate term for each~~  
16 ~~subordinate robbery conviction shall consist of one-third~~  
17 ~~of the middle term of imprisonment and one-third of the~~  
18 ~~enhancement provided in subdivision (b) of Section~~  
19 ~~12022.~~

20 SEC. 3. No reimbursement is required by this act  
21 pursuant to Section 6 of Article XIII B of the California  
22 Constitution because the only costs that may be incurred  
23 by a local agency or school district will be incurred  
24 because this act creates a new crime or infraction,  
25 eliminates a crime or infraction, or changes the penalty  
26 for a crime or infraction, within the meaning of Section  
27 17556 of the Government Code, or changes the definition  
28 of a crime within the meaning of Section 6 of Article  
29 XIII B of the California Constitution.